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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re AMARIS D., a Person Coming Under  
the Juvenile Court Law.

B189550  
(Los Angeles County  
Super. Ct. No. CK49637)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Petitioner and Respondent,

v.

CHERI C.,

Objector and Appellant.

APPEAL from an order of the Los Angeles County Superior Court, Marilyn Mackel, Commissioner (pursuant to Cal. Const., art. VI, § 21). Affirmed.

John Cahill, under appointment by the Court of Appeal, for Objector and Appellant.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County Counsel, and William D. Thetford, Senior Deputy County Counsel, for Petitioner and Respondent.

## **INTRODUCTION**

Cheri C. (mother), mother of Amaris D. (Amaris), appeals from an order terminating jurisdiction with a family law order awarding sole legal and physical custody to Leslie D. (father), presumed father of Amaris, and awarding mother visitation upon satisfaction of certain conditions. Mother contends that the juvenile court erred in failing to permit her to present evidence of compliance with a prior juvenile court order before terminating jurisdiction and that the juvenile court's failure to permit her to present evidence was prejudicial. We affirm.

## **BACKGROUND**

On February 5, 2004, Amaris's school principal reported to the Department of Children and Family Services (Department) that Amaris's adult sibling, Talina, informed the principal that mother was neglecting Amaris. According to the report, mother seemed to be mentally unstable and her home was dirty, piled with debris, and unlivable. Mother slept all day and night. All of Amaris's clothes were dirty and so was Amaris. Amaris had not been in school for three months and appeared to be undernourished.

At the time, a social worker reported that Talina stated that mother had a breakdown when Talina was seven years old and that Talina was removed from mother's care. Mother never regained custody of Talina. According to Talina, Amaris described conditions in her home that were similar to the way mother was living when Talina was removed from mother's care.

Amaris told a social worker that she had been concerned about mother for a long time. Mother slept all day and never cleaned the house. Amaris had to climb over piles of unwashed clothes and the house was infested with roaches, ants, and spiders. Mother shopped for food once a month, they would run out of food, and Amaris would have to eat apples all day. Mother would sometimes clean, and matters would be tolerable for a couple of days, but mother would revert to her prior behavior.

The social worker interviewed mother and found mother to be emotional and irrational when she arrived at the office. According to the social worker, mother

appeared to be unstable and she rambled. Mother stated that she gave up Talina to the Department because she did not have enough money to raise her appropriately. The social worker later learned that mother wanted the Department to take Talina into protective custody because mother was concerned about her own mental health. Yet, mother denied any mental illness or drug history. Mother discussed conspiracy theories, then covered her lips with her fingers and said that she had said too much. Mother agreed to meet with psychologist Dr. Mitchell, who diagnosed her with bi-polar disorder. Dr. Mitchell informed the social worker that a mental health computer file revealed that mother had been diagnosed with bi-polar disorder years earlier.

The file was closed in April 2004 after the social worker placed Amaris with father. Father and mother had separated eight years earlier after eight months of marriage due to mother's mood swings and anger. A subsequent stipulated court order awarded father physical custody, with mother awarded visitation rights.

In February 2005, mother refused to return Amaris to father after a visit. Mother told Amaris that father had attempted to harm mother with a machete, and that he would kill Amaris. The family court heard the matter and Amaris was ordered to reside with mother. Father was awarded visitation.

In May 2005, father reported that mother was emotionally abusing Amaris. Father reported that Amaris told him that she wanted to live with him because mother was yelling, screaming, and calling her the "F" word. On June 10, 2005, a social worker went to mother's home and knocked on the door. Mother looked through the peep hole, but would not open the door. The social worker explained the purpose of her visit and that she needed to inspect mother's home and interview Amaris. Mother came outside and refused to allow the social worker to enter her home.

The social worker interviewed mother who denied all accusations. According to the social worker, mother appeared to be mentally unstable and paranoid and displayed mood swings that concerned the social worker. Mother "rambled on" about father stealing from Amaris and that he threatened to kill her (apparently mother) every day. She claimed to have found in father's car a machete that she kept as proof. She also

claimed that father had broken into her apartment and stolen all the information on her computer including her social security number. Mother accused father of having stolen her identity and being involved in identity theft.

Mother insisted on being present when the social worker interviewed Amaris. Throughout the interview, Amaris looked at mother before answering questions. Amaris stated that mother slapped her twice for spilling water and not cleaning it up. She stated that mother's use of profanity made her uncomfortable.

The social worker discussed mother's mental health and the need to open a case with the Department with mother. Mother refused and stated that she was "fine" and that she did not need any services from the Department.

On June 14, 2005, two social workers went to mother's home. Again, mother refused to allow the social workers to enter her home. The social workers interviewed mother outside. The social worker reported that mother appeared to be paranoid and somewhat unstable. Mother revealed that she had been diagnosed with bi-polar disorder but was not taking medication. Mother stated that she would never take medications unless it was a life or death situation and that she believed in holistic medicine and meditation. The social workers offered mother counseling to help her cope with stress. Mother stated that she did not need counseling; what she needed was someone to change her social security number.

On June 15, 2005, Los Angeles County Superior Court Judge Michael Linfield called the Department and reported "possible caretaker incapacity by mother." Judge Linfield reported mother appeared to be "very delusional" and "acted very strange" in court that day. Judge Linfield doubted mother's mental capacity to properly parent Amaris.

On June 17, 2005, a social worker met privately with Amaris at her school. Amaris asked the social worker not to tell mother about the interview because mother would be really upset. According to Amaris, mother was angry all the time. The social worker asked Amaris how mother acted when she was angry. Amaris stated that mother cussed, screamed, and yelled at her. Amaris reported that mother would call her "mother

fuck'in bitch, son of a bitch, you little li'an bitch, she tells me to go to hell, get the fuck out of my house[,] don't fuck me up, shut the fuck up, go back to that son of a gun your fuck'in father." Amaris said mother hit her numerous times, threw things on the floor, and broke things. Amaris stated that she was afraid of mother and wanted to live with father.

When asked to describe mother, Amaris stated, "she is unpredictable. One minute, she calls me "my sunshine" and next minute, she calls me "you little fuckin bitch." It's really scary." When the social worker asked Amaris how she felt about living with mother, Amaris replied, "It feels like my mom is keeping me back, like pulling me back. It's like a strong rope or chain that's pulling [me] back."

Amaris told the social worker that she was late to school almost every day. According to Amaris, when she would awaken mother to take her to school, mother would tell her, "shut the fuck up. I'll get up when I am ready." Mother did not cook breakfast. Amaris ate lunch at school and tried to eat a lot at lunch because she sometimes did not have dinner at home. Mother would tell Amaris to eat fruit, but the only fruit in the home was rotten. Mother slept all day. If Amaris wanted clean clothes, she had to do her own laundry and ironing. Amaris had two burns on her arm that she received while ironing.

On June 17, 2005, Amaris's school principal told the social worker that mother appeared to be mentally unstable. Mother would come to school "ranting and raving" about racism and accusing the teachers of matters that were not true. Amaris's teacher reported that she no longer spoke with mother because mother would become "very angry and hostile." Amaris was 15 to 45 minutes late for school almost every day, her grades were falling, and her classroom behavior was deteriorating.

On June 22, 2005, father reported to the social worker that mother was mentally ill and was deteriorating. Father stated that Amaris had visited him the night before and, when it was time for her to go home, she began to cry and told him that she was afraid to go home to mother. Amaris told father that mother cussed at her every day and had been slapping her and throwing and breaking things around the house.

At about 5:30 p.m. on June 22, 2005, the social worker and two police officers went to mother's home. The social worker reported that mother was in bed asleep. The home was messy and unsanitary. There were piles of dirty laundry in the living room and bedroom. There was a pile of dirty dishes in the sink. There was no food in the refrigerator except for a few condiments. There was one rotten pear on the kitchen counter. As soon as Amaris got into the social worker's car, she "sat back and let out a big sigh and said, 'it sure feels good to leave that place.'" About two minutes later, Amaris thanked the social worker. Amaris was detained from mother and placed with father.

On June 27, 2005, the Department filed a petition in the juvenile court pursuant to Welfare and Institutions Code section 300, subdivisions (b), (c), and (g)<sup>1</sup> alleging that Amaris's physical and emotional well being had been placed at risk due to mother's mental and emotional problems, neglect, and financial inability to care for Amaris. The court found that a prima facie case had been established and ordered Amaris detained from mother and released to father. The court ordered mother to undergo a psychiatric examination and to take all prescribed medication.

At the adjudication hearing on August 29, 2005, the juvenile court sustained the petition. The court found that mother had demonstrated numerous mental and emotional problems, mother had failed to take her prescribed psychotropic medication, mother's home was found to be in a filthy and unsanitary condition, and mother failed to provide Amaris with the basic necessities of life, including food. The court ordered mother to undergo a psychiatric evaluation pursuant to Evidence Code section 730 and set the matter for a dispositional hearing on October 25, 2005.

At the dispositional hearing on October 25, 2005, the juvenile court found that returning Amaris to mother would pose substantial risk and detriment to Amaris, and placed Amaris with father. The court ordered the Department to provide family

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<sup>1</sup> All statutory citations are to the Welfare and Institutions Code unless otherwise noted.

maintenance services to father and family reunification services to mother. Mother was ordered to complete Department approved programs in parenting and individual counseling, to participate in the psychiatric/psychological evaluation, and to participate in conjoint counseling with Amaris when appropriate. The court set a hearing for December 20, 2005, for receipt of the Evidence Code section 730 report that it had not yet received, and set a review hearing for February 27, 2006.

On December 19, 2005, the Department filed an ex parte application requesting the juvenile court to modify mother's visitation from monitored to monitored in a therapeutic setting. The social worker reported that mother had been engaging in odd and inappropriate behavior during the visits that appeared to upset and scare Amaris. In support of the requested modification, the Department referred to a report from mother's psychiatric evaluator, Dr. Suzie Dupée. Dr. Dupée reported that Amaris seemed to be scared of and uncomfortable with mother. Dr. Dupée believed that mother's mental state was unstable and recommended that mother not visit with Amaris until mother had engaged in intensive psychiatric treatment. Dr. Dupée opined that mother would benefit from immediate psychiatric care in the form of mood stabilizers, antipsychotic medications, and weekly therapy, but doubted that mother would seek psychiatric treatment because mother denied that she suffered from any form of mental illness. The juvenile court ordered that mother would have visits in a monitored therapeutic setting once she started individual therapy. The court referred mother to Dr. Hebe Lien for individual counseling and to the Sharp Program.

In a Status Review Report for the February 27, 2006, hearing, the Department reported that Amaris was doing well living with father and appeared to be happy. Mother and Amaris had participated in two conjoint therapy sessions – although mother arrived five minutes before the end of one of the sessions. The conjoint counselor offered mother individual counsel, but mother refused stating that she did not think it was necessary. Amaris was attending weekly therapy sessions. Amaris expressed to her therapist anxiety due to visits with mother. The therapist expressed concern about mother's appropriateness during visits and the affect mother's negative behavior had on Amaris.

According to the report, mother had not enrolled in individual counseling or a parenting program. Mother had been resistant to accepting referrals and to discussing with the social worker her enrollment in counseling, stating that such information would be provided to the court. Mother told the social worker that she did not feel she needed counseling or parenting education.

On December 20, 2005, the social worker telephoned mother and provided her with the telephone number of Dr. Lien. On December 30, 2005, the social worker followed up with a letter to mother that included Dr. Lien's contact information. On January 5, 2006, the social worker provided mother with a referral to the Sharp Program. On January 13, 2006, mother contacted Dr. Lien and told her that her therapy would be paid for by special funds. On January 18, 2006, Dr. Lien telephoned the social worker to notify the social worker that she could not take mother as a client. According to the report, the social worker provided mother with referrals on July 7, 2005, July 18, 2005, July 28, 2005, September 8, 2005, November 9, 2005, and January 20, 2006. To the social worker's knowledge, mother had not contacted the Sharp Program or enrolled in counseling as of February 16, 2006.

According to Amaris, mother "acted more normal" in the conjoint therapy sessions than she had during the visits at the Department. The therapist reported that mother acted appropriately during the sessions, but refused to leave at the end of one of the sessions and became caustic. Amaris told the social worker that mother had followed Amaris and father after one of the sessions and had asked Amaris "weird questions," such as whether any of her friends had "gotten their period" or if they had "gotten breasts."

Mother told the social worker that she and Amaris should be "reunified." Mother denied all allegations of abuse and neglect. According to the social worker, mother did not believe that she suffered from any mental illness and she had not pursued treatment or made any effort to comply with the case plan. Father expressed his desire to the social worker to continue to have custody of Amaris. Amaris told the social worker that she wanted to stay with father and that she loved him very much. The Department recommended that dependency jurisdiction be terminated, that family maintenance and



family reunification services be terminated, and that father be granted sole legal and physical custody of Amaris.

At the February 27, 2006, hearing, the juvenile court terminated jurisdiction. The court awarded father sole legal and physical custody of Amaris with mother to have monitored visits in a “therapeutic setting only after mother has undergone mental health treatment and her therapist indicates that she is not a harm to the child and she has been taking her medication for a substantial period of time and has been stable in her own life prior to any of those visits taking place.”

## **DISCUSSION**

### **I. The Juvenile Court Did Not Prevent Mother From Presenting Evidence That She Had Complied With The Court’s Ordered Services**

Mother contends that the juvenile court erred when it prevented her from presenting evidence that she had complied or had been complying with the court’s order that she complete Department approved programs in parenting and individual counseling and to participate in conjoint counseling with Amaris. The record does not support mother’s contention.

#### **A. Relevant Proceedings**

Mother was not present when the hearing on February 27, 2006, commenced. Mother’s attorney informed the juvenile court that he had discussed the Department’s recommendation with mother, that mother was quite upset, and that he thought that was why mother was not present. The court proceeded in mother’s absence.

The juvenile court stated that the Department’s recommendation appeared to be appropriate in light of mother’s lack of compliance. Mother’s attorney objected, stating that mother had indicated that she was attending parenting class, individual counseling, and conjoint counseling with Amaris. Mother’s attorney stated that mother did not have any paperwork with her and that she wanted Amaris returned to her that day.

The juvenile court stated that mother suffered from a mental illness that had not been treated, that Amaris was “quite uncomfortable” being around mother, and that mother’s visits had been suspended because they posed an emotional detriment to Amaris. The court ordered a family law order be prepared consistent with the Department’s recommendations. As stated above, father was to have sole legal and physical custody of Amaris and mother was to have monitored visits in a “therapeutic setting only after mother has undergone mental health treatment and her therapist indicates that she is not a harm to the child and she has been taking her medication for a substantial period of time and has been stable in her own life prior to any of those visits taking place.” Mother’s attorney “object[ed] to the court proceeding in this fashion. As I indicated, she is opposed to the recommendations.” The juvenile court terminated jurisdiction pending receipt of the family law order.

After the juvenile court issued its orders, mother entered the courtroom. The juvenile court informed mother that her matter had been called and that her attorney would inform her of what had happened. Mother responded, “I want my baby back. There is no reason for her not to be returned. It was two years when they took her from the home when I struggled that one time I picked her up. [¶] I picked that baby up with a broken leg, brought her in the house and is still acting up and I tried to hold her. She was acting up. Just one tap to wake her up. [¶] I have been a good mother. Three churches are praying for me. Everybody has seen me with that baby. That baby is everything to me. I go everywhere with her. [¶] People say how excellent a mother that I am and since this has happened, so many young mother’s say I was such a great influence to see how to raise the baby correctly, how to take her to museums and how to – ”

The juvenile court interrupted mother stating, “To date we have not been able to get your cooperation with the intensive psychiatric treatment that you are required to have.” Mother responded, “I have cooperated.” The court advised mother that “If you have cooperated, all you need to do is take the documentation to the other court and they will hear your matter.”

## **B. Application of Relevant Principles**

“Section 366.26 is the sole statutory provision governing termination of parental rights. Subdivision (a) of the section states in pertinent part: ‘The procedures specified herein are *the exclusive procedures* for conducting these hearings.’ (Italics added.) Subdivision (b) states: ‘At the hearing, . . . the court . . . shall review the report [required by statute], shall indicate that the court has read and considered it, *shall receive other evidence that the parties may present*, and then shall make findings and orders . . . .’ (Italics added.)” (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1119.)

Mother contends that “despite being informed by both [mother’s] counsel, and [mother] herself that she had been complying with the Court’s orders, the court refused to take any evidence from [mother] regarding her compliance.” The record does not support this contention. Neither mother’s attorney nor mother made a request to present evidence of mother’s compliance.

Mother relies on *In re Michael W.* (1997) 54 Cal.App.4th 190, 196, for the proposition that “[t]he failure of the juvenile court to take evidence on the proper family law order it will issue is error.” *In re Michael W.* does not support that contention. In that case, in August 1995, the Department reported that the mother suffered from depression and had been hospitalized earlier that summer. (*In re Michael W.*, *supra*, 54 Cal.App.4th at p. 193.) The mother was prescribed a variety of medications and received out-patient treatment. (*Ibid.*) In April 1996, by which time the mother’s condition apparently had improved, the juvenile court held a hearing to determine if it should terminate jurisdiction and refer the case to the family law court for further proceedings. (*Ibid.*) The court denied the mother’s request for an evidentiary hearing to establish her progress during recent counseling, awarded the father physical custody of Michael, with only monitored visits for the mother, and terminated jurisdiction. (*Ibid.*)

A few days later, the mother again requested a hearing on the issue of visitation. (*In re Michael W.*, *supra*, 54 Cal.App.4th at p. 193.) The juvenile court again refused to hold a hearing, finding that there was no “change of circumstances,” and that it was in Michael’s best interests to continue with monitored visits until the mother’s therapist

could give an “unconditional recommendation” for unmonitored visits. (*Ibid.*) The juvenile court subsequently made its final order, granting the father physical and sole legal custody to Michael, with only monitored visits for the mother. (*Ibid.*)

The Court of Appeal held “‘when making an order to be transferred to the family court, the juvenile court has the power to hear evidence relevant to that order under section 362.4.’” (*In re Michael W.*, *supra*, 54 Cal.App.4th at pp. 194-195, quoting *In re Roger S.* (1992) 4 Cal.App.4th 25, 30.) The Court of Appeal reasoned, “a dependency court ought to accept all the help it can get before it makes an order affecting the lives of the children and parents who appear before it, and we cannot condone a deliberate decision to impose artificial restrictions on the parties’ ability to bring relevant evidence to the attention of the court.” (*In re Michael W.*, *supra*, 54 Cal.App.4th at p. 196.) Thus, the mother “was entitled to a hearing before the dependency court made its custody and visitation orders, terminated jurisdiction and transferred the matter to family law court.” (*Id.* at p. 194.)

The Court of Appeal in *In re Michael W.*, *supra*, 54 Cal.App.4th 190 did not hold that an evidentiary hearing is required every time a juvenile court makes an order to be transferred to the family court. Instead, the Court of Appeal held that juvenile courts have the power to hold such hearings and that it is error to deliberately impose artificial restriction on a party’s ability to bring relevant evidence to the juvenile court’s attention. (*Id.* at p. 196.) Here, the juvenile court did not refuse to hold an evidentiary hearing and did not otherwise impose any restrictions – arbitrary or not – on mother’s ability to bring relevant evidence to the court’s attention. Unlike the mother in *In re Michael W.*, mother did not request an evidentiary hearing to demonstrate her compliance with the juvenile court’s orders.

Apparently to address her failure to request an evidentiary hearing, mother contends that the juvenile court, having been presented with the claim that she had complied, or had been complying, with the court’s order, had a duty to set the matter for an evidentiary hearing or at least request an offer of proof from mother. In support of this argument, mother cites *In re Earl L.* (2004) 121 Cal.App.4th 1050, 1053 and *In re*

*Tamika T.*, *supra*, 97 Cal.App.4th at pages 1120-1122. Neither case stands for the asserted proposition. In *In re Earl L.*, *supra*, 121 Cal.App.4th at pages 1052-1053, the Court of Appeal held that a juvenile court has the discretion to require an adequate offer of proof as a condition precedent to a contested hearing on the sibling exception to the termination of parental rights under section 366.26, subdivision (c)(1)(E). In *In re Tamika T.*, *supra*, 97 Cal.App.4th at page 1122, the Court of Appeal held that “it does not violate due process for a trial court to require an offer of proof before conducting a contested hearing on one of the statutory exceptions to termination of parental rights.”

## **II. Mother’s Claim That the Juvenile Court’s “Refusal” To Permit Her To Present Evidence Of Her Compliance With The Court’s Ordered Services Was Prejudicial**

Mother claims that she was prejudiced by the juvenile court’s refusal to permit her to present evidence that she complied with the court’s order that she complete Department approved programs in parenting and individual counseling and that she participate in conjoint counseling with Amaris. Because the juvenile court did not prevent mother from presenting evidence, mother suffered no prejudice.

Section 302, subdivisions (d) provides that “Any custody or visitation order issued by the juvenile court at the time the juvenile court terminates its jurisdiction pursuant to Section 362.4 regarding a child who has been previously adjudged to be a dependent child of the juvenile court shall be a final judgment and shall remain in effect after that jurisdiction is terminated. The order shall not be modified in a proceeding or action described in Section 3021 of the Family Code unless the court finds that there has been a significant change of circumstances since the juvenile court issued the order and modification of the order is in the best interests of the child.”

Strictly applying section 302, subdivision (d), it appears that the juvenile court may have been incorrect when it advised mother that all she needed to do if she had cooperated with the court’s prior order was to take the documentation to the “other court” and it would “hear [her] matter.” If mother had complied at the time of the February 27,

2006, hearing, then providing documentation of such compliance to the family law court would not have shown the “significant change of circumstances since the juvenile court issued the order” that subdivision (d) requires. Here, however, even if the juvenile court’s advice was incorrect, there is no prejudice because, as we discussed, mother did not request an evidentiary hearing in the juvenile court, and the juvenile court properly terminated jurisdiction without setting an evidentiary hearing or requesting an offer of proof from mother.

In connection with her claim that she was prejudiced by the juvenile court’s failure to permit her to present evidence of her compliance with the court’s order that she complete Department approved programs in parenting and individual counseling and to participate in conjoint counseling with Amaris, mother also contends that the conditions in the juvenile court’s order concerning her future visitation are vague and ambiguous. She did not assert this as a separate ground of her appeal. Specifically, the juvenile court ordered that mother’s future visitation was to be monitored in a “therapeutic setting only after mother has undergone mental health treatment and her therapist indicates that she is not a harm to the child and she has been taking her medication for a substantial period of time and has been stable in her own life prior to any of those visits taking place.” Mother did not object to the order in the juvenile court on the basis that the order was vague or ambiguous. Accordingly, mother has forfeited appellate review of this contention even if it were a basis for appeal. (*In re Aaron B.* (1996) 46 Cal.App.4th 843, 846 [“[A] party is precluded from urging on appeal any point not raised in the trial court. [Citation.]”].)

## **DISPOSITION**

The order is affirmed.

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MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.